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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 EDWIN GOLDEN,

No. CIV S-03-2379-MCE-CMK-P

12 Plaintiff,

13 vs.

ORDER

14 GUERRERO, et al.,

15 Defendants.  
16 \_\_\_\_\_/

17 Plaintiff, a state prisoner proceeding pro se and in forma pauperis, brings this civil  
18 rights action pursuant to 42 U.S.C. § 1983. Pending before the court is plaintiff's third amended  
19 complaint (Doc. 17). The court is required to screen complaints brought by prisoners seeking  
20 relief against a governmental entity or officer or employee of a governmental entity. See 28  
21 U.S.C. § 1915A(a).

22 Plaintiff names the following as defendants: Guerrero; M. Newton; Kyte; and  
23 D.N. Moser.<sup>1</sup> Plaintiff claims that, on July 14, 2003, he was notified by correctional officer Kyte  
24 \_\_\_\_\_

25 <sup>1</sup> No other defendants are named in the operative complaint. The Clerk of the  
26 Court will, therefore, be directed to terminate all other defendants from this action and to update  
the docket to reflect the above caption.

1 that he would be charged with a rules violation for being out of bounds on the exercise yard.  
2 Plaintiff asserts that he overheard a conversation where Kyte told defendant Guerrero that “. . .  
3 plaintiff is a new ass hole on the yard, and needs to be taught the rules.” Plaintiff states that,  
4 immediately following this conversation, defendant Guerrero conducted a search of plaintiff’s  
5 cell and confiscated items of personal property. When plaintiff asked why the items were being  
6 taken away, defendant Guerrero allegedly replied: “This is what happens when you act like an  
7 ass on the yard.” Plaintiff asserts that he filed an inmate grievance concerning this incident.  
8 Plaintiff states that he was told that prison officers do not have time to be dealing with  
9 “crybabies.” Plaintiff ultimately withdrew his grievance. Plaintiff states that, on September 10,  
10 2003, defendant Guerrero again confiscated his property for no reason. Plaintiff alleges that this  
11 property has never been recovered.

12 Plaintiff next claims that, on November 3, 2003, he spoke with defendant Moser,  
13 who is a facility captain. Plaintiff states that he complained of defendant Guerrero’s alleged  
14 retaliatory conduct. According to plaintiff, defendant Moser said he would look into the  
15 situation.

16 Next, plaintiff alleges that, on November 12, 2003, defendant Guerrero offered to  
17 return a television set he had previously confiscated as a “trade” for plaintiff consenting to a  
18 reassignment of cellmates. Specifically, plaintiff claims that defendant Guerrero attempted to  
19 create tension within the prison’s population of Mexican inmates by moving “Northern  
20 Mexican” inmates into proximity with rival “Southern Mexican” inmates. Plaintiff asserts that  
21 he and 38 other inmates complained that this action was racially motivated.

22 Finally, plaintiff alleges that, during an appeal interview conducted on February  
23 18, 2004, he informed prison officials that he has been subject to numerous rules violation  
24 “write-ups” by defendant Newton in retaliation for the charges he made against him on January  
25 28, 2004.

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1           The third amended complaint appears to state a cognizable claim for relief  
2 pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1915A(b). If the allegations are proven, plaintiff  
3 has a reasonable opportunity to prevail on the merits of this action. The court, therefore, finds  
4 that service is appropriate and will direct service by the U.S. Marshal without pre-payment of  
5 costs. Plaintiff is informed, however, that this action cannot proceed further until plaintiff  
6 complies with this order. Plaintiff is warned that failure to comply with this order may result in  
7 dismissal of the action. See Local Rule 11-110.

8           Accordingly, IT IS HEREBY ORDERED that:

9           1.     The Clerk of the Court is directed to terminate all defendants from this  
10 action except those listed below, and to update the docket to reflect the caption on this order;

11          2.     Service is appropriate for the following defendant(s):

12                   GUERRERO;

13                   M. NEWTON;

14                   KYTE; and

15                   D.N. MOSER;

16          3.     The Clerk of the Court shall send plaintiff one USM-285 form for each  
17 defendant identified above, one summons, an instruction sheet, and a copy of the third complaint  
18 filed December 29, 2005; and

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1           4.       Within 30 days of the date of service of this order, plaintiff shall complete  
2 the attached Notice of Submission of Documents and submit the following documents to the  
3 court:

- 4                   a.       The completed Notice of Submission of Documents;  
5                   b.       One completed summons;  
6                   c.       Four completed USM-285 form(s); and  
7                   d.       Five copies of the endorsed third amended complaint.

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9 DATED: July 5, 2006.

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12 **CRAIG M. KELLISON**  
13 UNITED STATES MAGISTRATE JUDGE  
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7 **IN THE UNITED STATES DISTRICT COURT**  
8 **FOR THE EASTERN DISTRICT OF CALIFORNIA**

9 EDWIN GOLDEN,  
10

No. CIV S-03-2379-MCE-CMK-P

11 Plaintiff,

12 vs.

13 TOM L. CAREY, et al.,

14 Defendants.  
15 \_\_\_\_\_/

16 NOTICE OF SUBMISSION OF DOCUMENTS

17 Plaintiff hereby submits the following documents in compliance with the court's  
18 order:

19 1 completed summons form;  
20 \_\_\_\_\_ completed USM-285 form(s); and  
21 \_\_\_\_\_ copies of the third amended complaint.

22 DATED: \_\_\_\_\_  
23

\_\_\_\_\_  
24 Plaintiff  
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